85 No 2092

Supreme Court, U.S.
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CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

ALBERTA BRADFORD, as Executrix
of the Estate of Alex E. Bradford

MOONYENE S. JACKSON,

Petitioner

v.

BLUE PEARL MUSIC CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

---

* MOONYENE S. JACKSON
744 Broad Street
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BRENDA SAUNDERS HAMPDEN

Attorneys for Petitioner

* Counsel of Record

45 pp

QUESTIONS PRESENTED

Where the proceeding before the Magistrate was not noticed as a contempt proceeding or a formal hearing, is it a denial of constitutional due process when Black women lawyers are sanctioned on the basis of allegations of misrepresentation and vexatious conduct without a fair and proper hearing.

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

No. _____

ALBERTA BRADFORD, as Executrix of the Estate of Alex E. Bradford,

MOONYENE S. JACKSON,

Petitioner

v.

BLUE PEARL MUSIC CORPORATION,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner, Moonyene S. Jackson, an attorney at law in the State of New Jersey, duly admitted to practice before the Supreme Court of the United States, the United States Court of Appeals for the Third Circuit, and the United States District

Courts of New Jersey, respectfully requests that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit dated March 17, 1986.

OPINIONS BELOW

The Memorandum Opinion of the United States Court of Appeals for the Third Circuit dated March 17, 1986 is not reported, but is set forth in Appendix A. The judgment by the United States District Court for the District of New Jersey was entered without opinion.

JURISDICTION

The order of the Court of Appeals for the Third Circuit was dated and entered March 17, 1986. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1). It is the responsibility of this Court to maintain the constitution inviolate through independent inquiry of federal constitutional deprivations as contained in the record below.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Constitutional provisions involved are the Fifth and Sixth Amendments to the U. S. Constitution. The federal statutory provisions involved are: 28 U.S.C. §636 (b)(2), (c)(2),and (e); 28 U.S.C. §1927; and General Rule 40A4(c)(viii) of the United States District Court, District of New Jersey. The pertinent texts of the foregoing are set forth in the Appendix.

STATEMENT OF THE CASE

Following an appeal to the United States Court of Appeals for the Third Circuit, where defendant's counsel challenged the jurisdiction of a Federal Magistrate to order depositions in a matter subsequent to the filing of a Notice of Appeal, an event of jurisdictional significance, immediately conferring jurisdiction on a Court of Appeals and divesting a District Court of its control over those aspects of the case involved in the appeal, and where counsel specifically objected to the Federal Magistrate handling the matter, the Third Circuit made no specific finding on jurisdiction, but on July 22, 1985 affirmed the underlying order which held that a wife was responsible for the debts of her husband, who died intestate, in a copyright infringement action. This Court denied certiorari.

On March 17, 1986, the Third Circuit

filed an opinion and judgment affirming the District Court's order assessing monetary sanctions pursuant to 28 U.S.C. §1927 (1982)[A-10] against Moonyene S. Jackson, Esq., as counsel for Alberta Bradford during "contempt proceedings".[A-2] These proceedings, "styled" a hearing, were initiated by plaintiff by way of an order to show cause why defendant, Alberta Bradford should not be held in contempt of court, and why Moonyene S. Jackson, Esq. should not be found guilty of vexatious conduct pursuant to 28 U.S.C. §1927. [A-17]. The order to show cause was supported by affidavit of Barbara A. Moore, Esq., attorney representative of plaintiff at all relevant times.

On the return date of the order to show cause, Ms. Moore was not present, and, therefore, Ms. Jackson was denied an

opportunity to confront her as a witness, by cross-examining her as to her affidavit. Instead, Sean R. Kelly, Esq., another representative appeared on behalf of plaintiff. Mr. Kelly had not been present at the relevant proceedings which allegedly support the contention of vexatious conduct against Ms. Jackson.

In her appearance before the Magistrate, Ms. Jackson requested that Ms. Moore be present. The Magistrate ignored the request, effectively precluding Ms. Jackson from confronting her accuser, in violation of her Sixth Amendment right under the U. S. Constitution, a right asserted in this context because of the seriously damaging effect of the allegation.

Mr. Kelly could not testify as to the factual contentions in an affidavit not his own. Thus, the facts asserted by Ms. Jackson remained uncontroverted regarding

the order to show cause.

There was no notice that this "proceeding" was in fact a contempt proceeding. Moreover, Ms. Jackson was non-plussed when confronted on the day of the oral argument on the order to show cause for vexatious conduct to hear Magistrate Perretti for the first time charge her with "making patently false statements" or "misrepresenting facts".[1] Ms. Jackson denied making any false statement and denied misrepresenting any facts. Ms. Jackson requested the Magistrate to identify the statements referred to, since none were made in the affidavit in support of the order to show cause. Moreover, Magistrate Perretti never responded to Ms. Jackson, despite

1. All relevant parts of the record will be certified as provided by Rule 19 of the Supreme Court Rules.

counsel's repeated requests to apprise her of the specific allegations of misrepresentation. Ms. Jackson maintains that she made no false statements or misrepresentations, and a fair and proper hearing on the merits would so disclose.

REASONS FOR GRANTING THE WRIT

While the Court may have been exasperated by the multitudinous appearances concerning discovery in aid of execution, these appearances were not occasioned by Ms. Jackson. On one occasion when this was specifically pointed out to the Federal Magistrate, she said:

"It doesn't matter to me, m'am". [Tr. p. 14, Line 22]. Three out of four times that the parties were before the Court was due to plaintiff's counsel having proceeded incorrectly. On this the Court said it would not rule and did not. Failing to differentiate each proceeding thusly, there was not a fair determination respecting who multiplied the proceeding. There was no showing of bad faith. The ruling is not justified. Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980); Baker Industries, Inc. v. Cerberus, Ltd., 764

F.2d 204 (3d. Cir. 1985). See generally Eash v. Riggins Trucking , Inc. 757 F.2d 557 (3d Cir. 1985).

"Whatever may have been[the Court's] purpose in this inquisition, the effect of it [was] humiliation, anxiety, and possible intimidation of Petitioner, a reputable, [capable] member of the Bar. IN Re Jess Brown, 346 F.2d 903 (5th Cir. 1965); (A-12). An attorney simply advocating diligently for her client should not be given less protection and less access to due process than citizens who are not held to as high a standard. Particularly is this understandable when the District Court is divested of jurisdiction. Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982); 28 U.S.C. §636; Local Rule 40(A)(4)(c)(viii).

A representation is not actionable unless it is false. Hawkins v. Matthews, 495 F. Supp. 323 (E.D. Wis. 1980).

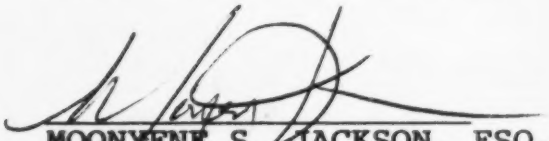
There was not one fact which was shown to have been misrepresented by Ms. Jackson. The record does not support any such finding. The conclusions which the courts were willing to reach were based upon the courts' perception that counsel willfully violated the court order or singularly adjourned the deposition, all based upon ambiguities of record simply resolved against her without benefit of a fair and proper hearing. Eavenson, Auchmuty, & Greenwald v. Holtzman, 775 F.2d 544 (3d. Cir. 1985). Allegations of misrepresentations and vexatious conduct can result in a collateral attack under the Canons of Ethics and Rules of Professional Responsibility by our Bar Associations. Sanctions equal discipline. Discipline without a hearing is in violation of due process rights and expectations which this Court holds inviolate. Cf. Colucci v. New York Times Compan 533 F. Supp. 1011 (S.D.N.Y. 1982);

Overnight Transportation Co. v. Chicago Industrial Tire Co., 697 F.2d 789 (7th. Cir. 1983); U. S. Constitution, Fifth Amendment, 28 U.S.C. §1927.

CONCLUSION

FOR THE FOREGOING REASONS, PETITIONER MOONYENE S. JACKSON, ESQ., RESPECTFULLY REQUESTS THIS COURT GRANT THE PETITION FOR THE WRIT OF CERTIORARI.

Respectfully submitted,



MOONYENE S. JACKSON, ESQ.
Counsel of Record,
Pro Se

APPENDIX

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 85-5497

BLUE PEARL MUSIC CORPORATION,

Appellee

v.

ALBERTA BRADFORD, As Executrix of the Estate of Alex E. Bradford, Deceased,

MOONYENE S. JACKSON,

Appellant

On Appeal from the United States District Court for the District of New Jersey
(D.C. Crim. No. 81-0537)
District Judge: Honorable Clarkson S. Fisher

Submitted Under Third Circuit Rule 12(6)
March 7, 1986

Before: GIBBONS, BECKER, and ROSENN, Circuit Judges

(Filed March 17, 1986)

MEMORANDUM OPINION OF THE COURT

BECKER, Circuit Judge.

This appeal is taken from the district court's order assessing monetary sanctions against Moonyene S. Jackson, Esquire, counsel for defendant-appellant Alberta Bradford. The sanctions were imposed pursuant to 28 U.S.C. §1927 (1982) on the ground that counsel had engaged in unreasonable and vexatious conduct which multiplied plaintiff's efforts to pursue discovery in aid of execution of a judgment entered against Mrs. Bradford in her individual capacity and also in her capacity as executrix of the estate of her late husband, Alex E. Bradford. We review under an abuse of discretion standard.

The case has a long and tortuous history, and has already been before us twice. In 1979, plaintiff-appellee Blue Pearl Music Corporation ("Blue Pearl") filed a copyright infringement action in the United States District Court for the District of New Jersey against Alberta Bradford and the Estate of Alex E. Bradford. That matter was settled.

This action, filed by Blue Pearl in February 1981, arose out of Mrs. Bradford's continuing infringement of Blue Pearl's copyrights to the late Mr. Bradford's compositions.[1]

Upon Mrs. Bradford's default, Chief Judge Clarkson S. Fisher entered a final order and judgment for injunctive relief enjoining Mrs. Bradford from further infringement of Blue Pearl's copyrights. He also ordered a hearing to assess damages. Following this hearing, at which Mrs. Bradford again did not appear, U.S. Magistrate Serena Perretti, issued a report and recommendation concluding that Blue Pearl had established seven separate infringements by Mrs. Bradford that on each occasion Mrs. Bradford had willfully infringed Blue Pearl's copyright.

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1. Mr. Bradford was the composer of the musical plays "Your Arm's Too Short to Box with God", "Don't Cry Mary, or What's a Friend For," both of which are involved in this lawsuit.

Magistrate Perretti recommended an award of statutory damages in the sum of $105,000.00, together with attorneys' fees and disbursements of $547.21. Chief Judge Fisher adopted the report and recommendation and entered a judgment for damages on December 1, 1981, in favor of Blue Pearl in the sum of $105,547.21.

On November 19, 1982, Mrs. Bradford finally responded to Blue Pearl's lawsuit by filing an "Answer and counterclaim and demand for jury trial" and a separate "Motion to vacate and set aside judgment of damages and motion to vacate and set aside default judgment and to restore the matter to the active calendar." Blue Pearl made a cross-motion to hold Mrs. Bradford in contempt of court and for sanctions for her breach of the provisions of the June 1981 judgment. After a hearing the district court denied Mrs. Bradford's motion to vacate and, on March 29, 1983, granted Blue Pearl's cross-motion for contempt. Mrs. Bradford appealed

both decisions. We affirmed, Blue Pearl Music Corp. v. Bradford, 728 F.2d, 603, (3d Cir. 1984), upholding the damage award.[2]

On or about November 2, 1984, upon Blue Pearl's motion, the district court entered an order, pursuant to Fed. R. Civ. P. 60(a), correcting the judgments of June 26, 1981, and December 1, 1981, to include "Alberta Bradford, individually" as judgment debtor. Mrs. Bradford thereafter filed a notice of appeal to this court from the district court's order correcting the aforesaid judgment. On or about July 22, 1985, we affirmed the district court's ruling. A petition for rehearing filed on behalf of Mrs. Bradford was denied on September 18, 1985.

During the pendency of Mrs. Bradford's

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2. We set aside the district court's order insofar as it ordered Mrs. Bradford to recreate, on pain of contempt, certain of her husband's work which had been lost.

appeal of the district court's order correcting the judgment against her, Blue Peal attempted to gain discovery as to her assets in aid of execution on the judgment. Unfortunately, the discovery proceedings proved extremely fractious. They were highlighted in their initial phase by bitter disputes between counsel over the scheduling of the deposition of Mrs. Bradford, and by Mrs. Bradford's failure to attend scheduled depositions. Blue Pearl alleges that this represented an effort to avoid the judgment; Mrs. Bradford denies it. Magistrate Perretti exhibiting admirable patience during a series of deposition enforcement hearings, adroitly sought to bring the deposition about. Unfortunately, her valiant efforts were not successful, and events occurring on and after March25, 1985, led her to recommend imposition of sanctions against Ms. Jackson, Mrs. Bradford's counsel, which give rise to this appeal.

On that date, in open court, the magistrate ordered that Mrs. Bradford appear for the taking of her deposition in aid of execution on March 27, 1985, only two days later. This request supplemented an already existing order that Mrs. Bradford had to appear at the desposition [sic] to give testimony regarding her personal and individual assets. At that time, Mrs. Bradford knew that she would be unable to attend the deposition on March 27 but failed to disclose this to the court. She did not attend the deposition on March 27 despite the outstanding orders. Only counsel for Mrs. Bradford attended this deposition, and it was adjourned after the parties waited approximately an hour and forty minutes. Further problems occurred on April 11, 1985. After this long and contentious history, when Mrs. Bradford's deposition finally got underway, counsel objected to all questions relating to Mrs. Bradford's individual assets.

Counsel based this objection upon the fact that the judgment against Mrs. Bradford in her individual capacity was the subject of an appeal and that a motion to stay enforcement of that judgment was also pending. It is clear, however, that the mere filing of the appeal and motion to stay did not stay enforcement of the judgment and that the three orders issued by the magistrate required Mrs. Bradford to provide discovery as to her personal assets. Nevertheless, counsel continued to direct her client not to answer any questions with regard to her personal assets.

At the conclusion of the deposition, Ms. Jackson advised that her co-counsel had placed a telephone call to Judge Fisher to request a hearing on an emergency application for a protective order precluding the taking of deposition testimony with regard to Mrs. Bradford's personal assets. Ms. Jackson agreed to telephone Judge Fisher's chambers

for a determination of the application. Judge Fisher denied the application for emergency relief, left Magistrate Perretti's order compelling the deposition undisturbed, and also kept the application for stay, returnable April 22, 1985, on the court's regular motion calendar. Counsel for Mrs. Bradford then advised Judge Fisher's law clerk that the defendant would appeal the court's decision denying the defendant's emergency application for a protective order.

Upon the conclusion of the telephone conference call to Judge Fisher's chambers, counsel resumed Mrs. Bradford's deposition to summarize the substance of the telephone conference call. In response to a direct question with regard to the continuing of the deposition, Ms. Jackson advised that she would continue to object to any questions directed to Mrs. Bradford's personal assets and would remain steadfast in her direction

to her client not to answer any such questions. At this point, the deposition was adjourned.

In the contempt proceedings before Magistrate Perretti that followed, Ms. Jackson misrepresented the basis of the termination of the deposition, and continued to rely upon patently indefensible grounds for her directions to her client.[3]

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3. We also note that, among the points that counsel pressed before the magistrate and in the district court and indeed continues to assert on this appeal, is the objection that the magistrate acted concerning matters "de bene esse." We do not understand what this means. Local Rule 40A4(c)(viii) of the District Court provides that the magistrate has the power to conduct

> proceedings to compel the giving of testimony or production of documents in this district in connection with discovery, or testimony de bene esse, or for perpetuation of testimony, for use in a matter pending or contemplated in another court.

If this is what counsel is referring to, it only obfuscates the matter, just as have many other of counsel's stratagems in this case.

Magistrate Perretti reviewed counsel's oral presentation to the court in defense of the allegations against her. In each instance Magistrate Perretti found that counsel had mischaracterized the events of record and continually raised matters that had been previously precluded. Finding this conduct to be both "obstreperous" and "outrageous", Magistrate Perretti stated that she would respectfully recommend to the Chief Judge that counsel be assessed personally with the plaintiff's expenses incurred in connection with its attempts to conduct discovery in aid of execution from and after March 25, 1985.

As we have explained, counsel's conduct in connection with the deposition is even more indefensible. In the absence of a stay and despite repeated orders of Magistrate Perretti which Chief Judge Fisher refused to disturb, counsel obstructed the deposition and later misrepresented the basis of its adjournment to the court.

Ms. Jackson is a capable and reputable member of the bar, and we can only attribute her abberational conduct in this case to her emotional involvement in her client's cause, leading to an excessive and irresponsible zeal. Counsel's emotional involvement seems to have arisen out of identification with her client whom she apparently sees as long suffering and sorely aggrieved woman, but this cannot justify her conduct.

We have reviewed the record with care. We give appropriate deference to the findings of the district court and cognizanc of the requisites of 28 U.S.C. §1927, see Baker Industries, Inc. v. Cerberus Ltd., 764 F.2d 204,209 (3d Cir. 1985). On the basis of the review, we do not find an abuse of discretion in imposition of sanctions. Accordingly, the judgment of the district court will be affirmed.

TO THE CLERK: Kindly file the foregoing opinion.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 85-5497

BLUE PEARL MUSIC CORPORATION,

Appellee

v.

ALBERTA BRADFORD, As Executrix of the Estate of Alex E. Bradford, Deceased

MOONYENE S. JACKSON,

Appellant

On Appeal from the United States District Court for the District of New Jersey
(D.C. Civ. No. 81-0537)
District Judge: Honorable Clarkson S. Fisher

Before: GIBBONS, BECKER, and ROSENN, Circuit Judges

JUDGMENT

This cause came to be heard on the record from the United States District Court for the District of New Jersey and was sub-

mitted under Third Circuit Rule 12(6) on March 7, 1986.

On consideration whereof, it is now here ordered and adjudged by this Court that the order of the district court dated July 16, 1985 be, and the same is hereby affirmed.

Costs taxed against appellant.

ATTEST:

Sally Mrvos

Clerk

March 17, 1986

Costs taxed in favor of appelle as follows

Appendix	$146.25
Brief	$ 58.50
TOTAL.....	$204.75

Certified as a true copy and issued in lieu of a formal mandate on April 8, 1986.

Test: M. Elizabeth Ferguson

Chief Deputy Clerk, United States Court of Appeals for the Third Circuit.

APPENDIX C

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

BLUE PEARL MUSIC CORPORATION, :

Plaintiff, :

v. :

ALBERTA BRADFORD, individually and as Executrix (Administratrix) of the Estate of Alex E. Bradford Deceased, :

Defendant. :

Civil Action No. 81-537

ORDER

The court having received two reports and recommendations from the Honorable Serina [sic] Perretti, United States Magistrate, and the court being in agreement with the reports and the recommendations contained therein, it is, on this 12th day of July, 1985,

ORDERED that the report and recommendation of the magistrate dated and

filed May 9, 1985, recommending that reasonable attorneys' fees caused by the vexatious conduct of defendant's counsel, Moonyene S. Jackson, be assessed against her personally pursuant to 28 U.S.C. §1927 is approved and adopted by the court; and it is further

ORDERED that the report and recommendation of the magistrate dated and filed May 24, 1985, recommending payment by Ms. Jackson personally to plaintiff's counsel the sum of $2,690 attorneys' fee, plus $924.18 for disbursements is approved and adopted by the court and payment is to be made by Ms. Jackson forthwith.

CLARKSON S. FISHER, Chief Ju
United States District Court

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

BLUE PEARL MUSIC CORPORATION,

Plaintiff,

-vs-

ALBERTA BRADFORD, Individually,
and as Executrix (Administratrix)
of the Estate of Alex E. Bradford,
Deceased,

Defendant.

ORDER TO SHOW CAUSE
IN AID OF LITIGANT'S
RIGHTS

This matter, having been opened to the Court by Pitney, Hardin, Kipp & Szuch, attorneys for plaintiff, Blue Pearl Music Corporation, for an Order to Show Cause in Aid of Litigant's Rights, and it appearing that counsel for plaintiff and Alberta Bradford as well as her attorney, Moonyene S. Jackson, Esq., having appeared before this Court, the Honorable Serena Perretti, United States Magistrate, presiding, on March 25, 1985 and on April 8, 1985 on plaintiff's applications for similar relief

in this action, and this Court having ordered on both occasions that Alberta Bradford appear for depositions in aid of judgment and make discovery under oath as to her assets and that of the Estate of Alex E. Bradford, deceased, and it further appearing that defendant's emergent application to the Honorable Clarkson Fisher for a protective order precluding discovery by way of deposition as to Mrs. Bradford's personal assets having been denied, and it further appearing that Alberta Bradford, upon advice of Moonyene S. Jackson, Esq., nonetheless has refused to give deposition testimony with regard to her personal assets in direct violation of this Court's Order; and good cause having been shown,

IT IS on this 15th day of April, 1985,

ORDERED that Alberta Bradford appear before this Court at the United States District Court, 477 Post Office and Court-

house Building, Newark, New Jersey, on the 1st day of May, 1985 at 10:00 a.m. and that Alberta Bradford at that time show cause why she should not be adjudged in contempt of Court for failing to obey the Court's Order issuing on April 8, 1985, and why such sanctions as the Court deems appropriate should not be imposed; and it is

FURTHER ORDERED that Moonyene S. Jackson, Esq. appear before this Court at the United States District Court, 477 Post Office and Courthouse Building, Newark, New Jersey on the 1st day of May, 1985 at 10:00 a.m., and that Moonyene S. Jackson, Esq. at that time show cause why she should not be required, pursuant to 28 U.S.C. §1927, to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of her unreasonable and vexatious conduct which has unnecessarily multiplied the proceedings in this action;

and it is

FURTHER ORDERED that a copy of this Order be certified a true copy by plaintiff counsel and served personally, together wit a copy of the certification filed in suppor of the application for this Order, upon Alberta Bradford and upon Moonyene S. Jackson, Esq. not later than April 24, 198 and that if personal service cannot be made this Order and the Certification may be served upon Alberta Bradford and Moonyene S. Jackson, Esq. by certified and/or regular first-class mail.

/s/
SERENA PERRETTI
United States Magistrate

APPENDIX E

April 15, 1985

Moonyene S. Jackson, Esq.
206 Claremont Avenue
Suite 2 West
Montclair, New Jersey 07042

Barbara A. Moore, Esq.
Pitney, Hardin, Kipp & Szuch
163 Madison Avenue
CN 1945
Morristown, New Jersey 07960

Re: Blue Pearl Music Company v. Alberta Bradford. Civil Action No. 81-537

Mesdames:

Defendant's Motion for a Stay of Proceedings Pending Appeal still be [sic] decided pursuant to Federal Rule of Civil Procedure 78, and without oral argument.

Sincerely,

/s/

Clarkson S. Fisher
Chief Judge

CSF:smb

APPENDIX F

AMENDMENTS TO THE CONSTITUTION

AMENDMENT [V]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT [VI]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

APPENDIX G

28 U.S.C. §636(b)(2): A judge may designate a magistrate to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

28 U.S.C. §636(c)(2): If a magistrate is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of their right to consent to the exercise of such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, neither the district judge nor the magistrate shall attempt to persuade or induce any party to consent to reference of any civil matter to a magistrate. Rules of court for the reference of civil matters to magistrates shall include procedures to protect the voluntariness of the parties' consent.

28 U.S.C. §636(e): In a proceeding before a magistrate, any of the following acts or conduct shall constitute a contempt of the district court for the district wherein the magistrate is sitting: (1)disobedience or resistance to any lawful order, process, or writ; (2)misbehavior at a hearing or other proceeding, or so near the place thereof as to obstruct the same;(3)failure to produce, after having been ordered to do so, any pertinent document;(4)refusal to appear after having been subpoenaed or,

upon appearing, refusal to take the oath or affirmation as a witness, or, having taken the oath or affirmation, refusal to be examined according to law; or(5) any other act or conduct which if committed before a judge of the district court would constitute contempt of such court. Upon the commission of any such act or conduct, the magistrate shall forthwith certify the facts to a judge of the district court and may serve or cause to be served upon any person whose behavior is brought into question under this section an order requiring such person to appear before a judge of that court upon a day certain to show cause why he should not be adjudged in contempt by reason of the facts so certified. A judge of the district court shall thereupon, in a summary manner, hear the evidence as to the act or conduct complained of an, if it is such as to warrant punishment, punish such person in the same manner and to the same extent as for a contempt committed before a judge of the court, or commit such person upon the conditions applicable in the case of defiance of the process of the district court or misconduct in the presence of a judge of that court.

APPENDIX H

28 U.S.C. §1927

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

(As amended Sept. 12, 1980, Pub.L. 96-349, §3, 94 Stat. 1156.)

APPENDIX I

U. S. DISTRICT COURT (NEW JERSEY)

GENERAL RULE 40A4(c)(viii)

In pertinent part:

(c) As part of the Magistrate's general supervision of the civil calendar, the Magistrate shall conduct scheduling conferences and enter scheduling orders in accordance with Rule 16 of the Civil Rules in all civil cases except the following:

...

(viii) proceedings to compel the giving of testimony or production of documents in this District in connection with discovery, or testimony de bene esse, or for perpetuation of testimony, for use in a matter pending or contemplated in another court;

...